

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

Gary W. Miller,)	Case No. _____
)	
Plaintiff,)	
)	
vs.)	
)	
Union Pacific Railroad Company,)	
a Delaware corporation,)	
)	
Defendant.)	

Complaint and Jury Demand

COMES NOW the plaintiff, Gary W. Miller and for his first cause of action against Defendant, Union Pacific Railroad Company, a Delaware corporation, states and alleges as follows:

Count One

1. That the jurisdiction of the above-named Court is based upon the Federal Employers' Liability Act, 45 U.S.C., §§51-60, and that this action is timely commenced within the meaning of 45 U.S.C. §56.

2. That at all times material herein, Defendant, Union Pacific Railroad Company, a Delaware corporation, was the owner of and was operating various tracks and yards in the County of Douglas, State of Nebraska, and was and is engaged as a common carrier in interstate commerce.

3. That at all times material herein, Defendant employed Plaintiff as a locomotive engineer and that at the time of the occurrence of the accident herein, all or part of Plaintiff's duties were in the furtherance of Defendant's business of interstate commerce.

4. That on or about the 20th day of September 2015 at approximately 8:00 p.m.,

Plaintiff was in the course and scope of his employment working as a locomotive engineer with his conductor operating train LV054-20 westbound on the mainline near Yukon, Oklahoma. The train came upon a switch near MP 498.3 that was improperly lined against mainline movement. As a result, the train derailed causing Plaintiff to suffer injury and damages as hereinafter set forth.

5. That the injuries and damages sustained by Plaintiff were caused by the negligence of Defendant in one or more of the following particulars:

- a. Failure of the subject switch to be aligned for mainline movement as required by G.C.O.R. 8.3;
- b. Failure of one or more employees to properly secure switch keys to prevent operation of the subject switch by unauthorized employees as required by G.C.O.R. 1.19;
- c. Failure to remove the subject switch when the industry track became obsolete;
- d. Failure to keep the subject switch target clearly visible, including failing to inspect and maintain the subject switch and to control surrounding vegetation in violation of 49 CFR 213.37; and,
- e. Failure to provide a reasonably safe place to work.

6. That as a result of the negligence of Defendant, Plaintiff has suffered pain in the past and will suffer pain in the future; has incurred expenses for medical treatment and will incur further like expenses in the future; has suffered loss of earnings; impairment of future earning capacity; and loss of his enjoyment of life, all to his injury and damage.

Count Two

COMES NOW the plaintiff, Gary W. Miller and for his second cause of action against Defendant, Union Pacific Railroad Company, a Delaware corporation, states and alleges as follows:

7. Re-alleges Paragraphs 1, 2, 3, 4 and 5 of Plaintiff's first cause of action herein as

though set forth at length and in detail herein.

8. The acts and omissions of Defendant described above include Defendant's violation of one or more safety rules, regulations and statutes, including the Defendant's own rules, and constitute strict liability against Defendant.

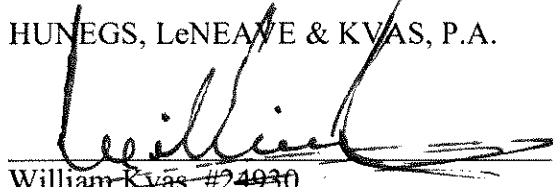
9. That as a result of the negligence of Defendant, Plaintiff has suffered pain in the past and will suffer pain in the future; has incurred expenses for medical treatment and will incur further like expenses in the future; has suffered loss of earnings; impairment of future earning capacity; and loss of his enjoyment of life, all to his injury and damage.

WHEREFORE, Plaintiff Gary W. Miller prays for judgment against Defendant, Union Pacific Railroad Company, a Delaware corporation, in an amount to be determined as reasonable compensation, together with interest thereon as provided by law, costs and disbursements and for such other and further relief as the Court may deem just and appropriate.

PLAINTIFF DEMANDS A TRIAL BY JURY.

Dated: June 11, 2018

HUNEGS, LeNEAVE & KVAS, P.A.



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